

ORIGINAL

DOCKET FILE COPY ORIGINAL

RECEIVED

MAR 18 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Establishment of an Advisory Committee
to Negotiate Proposed Regulations

CC Docket 92-297

**COMMENTS AND APPLICATION
FOR ADVISORY COMMITTEE MEMBERSHIP**

I. OVERVIEW

Pursuant to the procedures set forth in § 4(c) of the Negotiated Rulemaking Act of 1990, 5 U.S.C. § 584(c), LDH International, Inc. (hereinafter "LDH") hereby submits the following comments and application for negotiated rulemaking committee membership. LDH makes this submission in response to the Commission's proposed establishment of a Federal Advisory Committee (hereinafter "Committee") to negotiate regulations defining the technical rules appropriate to co-primary sharing of the 27.5 to 29.5 GHz (hereinafter "28 GHz") band between the proposed Local Multipoint Distribution Service (hereinafter "LMDS") and the Fixed Satellite Service.¹ LDH believes that the establishment of the Committee and the use of regulatory negotiation in the above-captioned rulemaking has the potential to advance this matter toward an equitable resolution. As discussed more thoroughly below, LDH maintains that it is a party in interest who is entitled to place its representative on the Committee.

¹See Public Notice Mimeo No. 41726 (released February 11, 1994) (the "Notice").

No. of Copies rec'd
List ABCDE

946

II. BACKGROUND

On February 19, 1991, LDH filed fifteen (15) applications with the Commission seeking authority to utilize the 28 GHz band to provide a wide range of point-to-point voice, data and video services.² These applications appeared on Public Notice on May 15, 1991.³ On October 30, 1991, in an effort to expedite the 28 GHz application process, LDH filed a Joint Request for Approval of Agreement and Grant to resolve mutually exclusive applications among LDH and two other mutually exclusive applicants. This request was never addressed by the FCC.

Subsequently, LDH's applications were dismissed en masse concurrently with the adoption of the Commission's proposal in the above-captioned rulemaking proceeding.⁴ In response to the dismissal of the applications, LDH filed a Petition for Reconsideration before the Commission.⁵ In addition, LDH sought relief by filing a Petition for Review with the United States Court

²See FCC File Nos. 10797-CF-P-91 through 10802-CF-P-91, 11266-CF-P-91, 11267-CF-P-91, 11269-CF-P-91 through 11273-CF-P-91, 11303-CF-P-91 and 11125-CF-P-91 (FCC Forms 494 seeking point-to-point authority in the 28 GHz band).

³See Public Notice Report No. D-592.

⁴Rulemaking to Amend Part 1 and Part 21 of the Commission's Rules to Redesignate the 27.5 - 29.5 GHz Frequency Band and to Establish Rules and Policies for Local Multipoint Distribution Service, Notice of Proposed Rulemaking, Order, Tentative Decision, and Order on Reconsideration, CC Docket 92 - 297, 8 FCC Rcd 557 (1993).

⁵Petition for Reconsideration, in the matters of CC Docket No. 92-297, RM-7872 and RM-7722, Video/Phone Systems, Inc., February 8, 1993.

of Appeals.⁶ To date, the Commission has yet to act on LDH's Petition for Reconsideration and, consequently, the Court has refrained from ruling on LDH's appeal.⁷

Ideally, LDH would have preferred that the Commission had dealt with its Petition for Reconsideration prior to initiating the negotiated rulemaking process. Nevertheless, LDH will not oppose any commission action that might ultimately lead to an equitable resolution of the 28 GHz matter. LDH asserts, however, that its interests in the outcome of the LMDS rulemaking will not be adequately represented unless its nominated representative is seated on the Committee.

III. LDH MEETS THE COMMISSION'S CRITERIA FOR COMMITTEE MEMBERSHIP

LDH maintains that it fulfills all applicable criteria for membership on the Committee. As an applicant seeking Commission and judicial review of the dismissal of its 28 GHz applications, LDH will be significantly impacted by the outcome of the LMDS negotiated rulemaking. For instance, an administrative or judicial

⁶See James L. Melcher, et. al., Petitioners v. Federal Communications Commission and the United States of America, Respondents, U.S. Court of Appeals for the District of Columbia Circuit, No. 93-1110, et. al., February 8, 1993.

⁷LDH respectfully urges the Commission to act on its Petition for Reconsideration with all due speed. Any further delay is likely to result in further damage to LDH's interests. Similarly, a Petition to Deny was filed by Suite 12 on October 7, 1991. A detailed response was filed by LDH on July 10, 1991. The Response included substantial engineering information which should lend assistance to the committee. The Petition to Deny has not been addressed by the FCC.

reinstatement of LDH's applications could be rendered moot if sufficient 28 GHz spectrum is not made available for terrestrial service providers. Either action will effect the course of this proceeding. In further support, LDH notes the following: LDH filed the first fifteen applications, which have appeared on Public Notice, to utilize the 28 GHz band. LDH is a pioneer applicant in this arena. Its originally filed applications provided many novel and innovative examples of potential uses for the spectrum and attracted numerous other applicants. It has, and continues to expend thousands of dollars to promote the equitable use of these frequencies. Over the subsequent years, LDH has discovered increasingly imaginative methods for continued and expanded uses of the 28 GHz band. As a member of the committee LDH would share its considerable expertise with the Commission and other industry representatives. To this end, LDH has the talent and resources to assist the Commission in negotiating the particulars of equitable sharing of these valuable frequencies.

IV. PROCEDURAL MATTERS

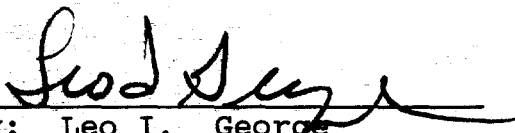
Based on the foregoing, and pursuant to paragraph 11 of the Notice, LDH hereby nominates Leo I. George, Esq. as its representative to the Committee. Additionally, and in accordance with paragraph 11(c) of the Notice, LDH hereby certifies that in its capacity as a member of the Committee, LDH will actively participate in good faith in the development of the rules under consideration.

V. CONCLUSION

As set forth above, LDH views favorably the proposed establishment of the LMDS Advisory Committee and the employment of regulatory negotiation to advance this matter toward equitable resolution. As a 28 GHz applicant awaiting reinstatement of its dismissed applications pursuant to Commission and judicial proceedings. LDH already has as substantial stake in the nascent 28 GHz industry and could be significantly affected by the eventual outcome of the proposed negotiated rulemaking. Furthermore, LDH's interests cannot be adequately represented by any entity currently designated by the Commission for membership on the LMDS Advisory Committee. For the foregoing reasons, the Commission should grant LDH's request its representative be impaneled on the LMDS Advisory Committee.

Respectfully submitted,

LDH International, Inc.


by: Leo I. George
President

March 18, 1994